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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 696

EDMUND THOMAS GUILLEBEAU, JR., AND LUCY COULTER GUILLEBEAU, HUSBAND AND WIFE, PETITIONERS,

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum findings of fact and opinion of the Tax Court (Pet. 1a-14a) are not officially reported. The opinion of the Court of Appeals (Pet. 15a-19a) is reported at 249 F. 2d 225.

JURISDICTION

The judgment of the Court of Appeals was entered November 7, 1957. (Pet. 19a-20a.) On January 31, 1958, an order was entered extending the time within which to file the petition for a writ of certiorari to April 5, 1958. The petition was filed on April 4, 1958. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254.

separate taxable entity. It was set up to purchase and process not only taxpayer's crop, but also the crops of other peanut growers in the locality, with the expectation of making a profit out of that business. (Pet. 5a-8a, 16a-17a.) That one of the reasons for which the corporation was formed was to create a better market for taxpayer's farming products does not, as taxpayer assumes (Pet. 12-13), serve to render his "business" the same as that of the corporation within the purview of Section 23 (k). Moreover, while this may have been one of several motives for the formation of the corporation, the evidence clearly shows that the loans thereafter made to it were directly related to the corporation's business of buying and processing peanuts, and that the loss resulting from the debt's becoming worthless was not sustained in carrying on taxpayer's separate farming operations. (Pet. 7a-8a.) Under the circumstances the Tax Court was fully justified in concluding that the losses were non-business rather than business bad debts losses, and under familiar rules governing the scope of judicial review of the Tax Court's factual determinations, the court below was equally justified in affirming.

3. There is no conflict with any appellate decision, nor is any asserted. The Tax Court decisions upon which taxpayer relies (Pet. 13-14), turn on clearly distinguishable facts. As the court below observed (Pet. 19a), these cases do not require a different result here.

CONCLUSION

The decision below is correct, there is no conflict and no question of general importance is presented. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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MAY 1958.

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